

PLAINTIFF HERNANDEZ'S DEPOSITION

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

Santos Hernandez, Emanuel De Jesus Lievano
and Miguel Antonio Vasquez,

Case No.:

Plaintiffs,

20CV04026-JMA (SIL)

-against-

Rosso Uptown Ltd., Michael Tizzano and
Massimo Gammella,

Defendants.

-----X

1129 Northern Boulevard
Manhasset, New York
August 11, 2022
9:57 a.m.

DEPOSITION of SANTOS HERNANDEZ, a
Plaintiff herein, taken by the Defendants,
pursuant to Article 31 of the Civil Practice
Law & Rules of Testimony, and Order, held at
the above-mentioned time and place, before,
Jane Martone, a Court Reporter and Notary
Public of the State of New York.

* * *

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WITNESSES: [illegible]

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APPEARANCES:
MOSER LAW FIRM, ESQ.
Attorneys for Plaintiff
SANTOS HERNANDEZ
Five East Main Street
Huntington, New York 11542
BY: Steven John Moser, Esq.

Massimo Gammella, Pro Se
24 Manorhaven Boulevard
Port Washington, New York 11050

ALSO PRESENT:
MILADY MONTENEGRO, Spanish Interpreter from
Eiber Translations

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FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND
AGREED by
and between the parties hereto, through
their respective counsel, that the
certification, sealing and filing of the
within examination will be and the same are
hereby waived;

IT IS FURTHER STIPULATED AND
AGREED
that all objections, except as to the form
of the question, will be reserved to the
time of the trial;

IT IS FURTHER STIPULATED AND
AGREED that the within examination may be
signed before any Notary Public with the
same force and effect as if signed and sworn
to before this Court.

1
2 M I L A D Y M O N T E N E G R O, a Spanish
3 interpreter, solemnly swore to translate the
4 following questions from English to Spanish
5 and answers from Spanish to English:

6
7 S A N T O S H E R N A N D E Z, called as a
8 witness, having been first duly sworn,
9 through an interpreter, by a Notary Public
10 of the State of New York, was examined and
11 testified as follows:

12 EXAMINATION BY
13 THE COURT REPORTER:

14 Q. State your name for the record,
15 please.

16 A. Santos Hernandez.

17 Q. State your address for the record,
18 please.

19 A. 34 Hendrick Avenue, Glen Cove, New
20 York 11542.

21 EXAMINATION BY

22 MR. GAMMELLA:

23 Q. Mr. Hernandez, do you understand that
24 you're under oath and that being under oath
25 means that you are sworn to tell the truth?

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1 S. HERNANDEZ

2 A. Yes.

3 Q. Have you ever had a deposition taken
4 in the past?

5 A. No.

6 Q. What is your full name?

7 A. Santos Hernandez.

8 Q. Have you ever used any other name,
9 maiden name, or anything like that?

10 A. No.

11 Q. What is your date of birth and where
12 were you born?

13 A. November 22, '53. Honduras.

14 Q. What's your age?

15 A. I am already 68. I am about to be
16 69.

17 Q. What is your current address?

18 A. 34 Hendrick Avenue in Glen Cove.

19 Q. How long have you lived there?

20 A. It's been many years already. I
21 don't know how many years, but it's been a
22 lot of years.

23 Q. Where else have you lived previously?
24 Anyplace else?

25 A. I lived in Glen Cove as well. The

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1 S. HERNANDEZ

2 address was 27 -- I forget the address, but
3 it was in Glen Cove by the beach, and I also
4 have lived in Roslyn.

5 Q. Did anyone live with you?

6 A. Yes, my oldest son.

7 Q. For how long?

8 A. It's been about 12 years we have been
9 living together more or less.

10 Q. Have you ever been married?

11 A. Not here.

12 Q. Do you have children? Obviously.
13 How many children do you have?

14 A. I have eight children. Four boys and
15 four girls.

16 Q. Are any of them, I guess, living here
17 are they employed?

18 MR. MOSER: Objection. My
19 objection is to the relevancy of the
20 employment of his children to this
21 action.

22 MR. GAMMELLA: The son that lives
23 with him.

24 Q. Is the son that lives with you
25 employed?

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1 S. HERNANDEZ

2 MR. GAMMELLA: If you want to
3 object, that's okay.

4 A. He has a company.

5 Q. He owns a company. Okay.

6 Have you ever been arrested?

7 A. No.

8 Q. Did you prepare for this deposition?

9 A. No.

10 Q. Have you spoken to anyone about, you
11 know, this case? About what's going on here
12 in this lawsuit?

13 A. No.

14 Q. Now, what is the meaning of minimum
15 wage? Can you explain? Do you know?

16 A. Look, when I started working for this
17 gentleman --

18 Q. That's not the question. The
19 question is: What's the meaning of minimum
20 wage?

21 A. Well, I don't know.

22 Q. Can you tell me then what it is the
23 meaning of minimum wage now? No, you don't
24 know?

25 A. Well, at the jobs that I've worked at

1 S. HERNANDEZ

2 I have been paid \$15.00 an hour. That's
3 what I have been paid, and the overtime has
4 been paid to me at 22.

5 Q. Was it the same when you worked at
6 Rosso Uptown?

7 A. No.

8 Q. Can you tell us what's working
9 overtime means?

10 A. Well, at the other jobs I have worked
11 40 hours at \$15.00 an hour. After eight
12 hours, it's paid overtime.

13 Q. The \$15.00 an hour that you
14 supposedly get paid now, was that the same
15 at Rosso Uptown when you were working there?

16 A. Around that time I was not being paid
17 like that.

18 Q. Do you remember what was the minimum
19 wage then?

20 A. I was working --

21 Q. Well, that's not the question.
22 Again, that's not the question. The
23 question is: What was getting paid then as
24 minimum wage? You say that minimum wage --
25 now he's getting paid 15 according to him.

1 S. HERNANDEZ

2 Does he know what he was paid then at Rosso
3 Uptown? If he knows. If you don't, that's
4 fine.

5 A. I don't recall around that time.

6 Q. How do you know Rosso Uptown was
7 looking to hire then when you got the job?

8 A. I was looking for it.

9 Q. You were looking? You just stopped
10 in, or somebody told him? I know you were
11 looking for it.

12 A. I walked in. I walked into the
13 restaurant.

14 Q. How did you get hired by Rosso
15 Uptown?

16 A. With the gentleman.

17 Q. Who hired you?

18 A. Mr. Massimo.

19 Q. While you were employed at Rosso
20 Uptown, did you work anyplace else?

21 A. No.

22 Q. When did Rosso Uptown open for the
23 first time, do you remember?

24 A. I started March 20th of 2016. From
25 March 20th through May 31st I was being paid

1 S. HERNANDEZ

2 400.00.

3 Q. We'll let it lie, but that was not
4 the question, again. I'll re-ask it.

5 When was the first time Rosso Uptown
6 was opened? But that's okay.

7 A. No.

8 Q. Can you describe the job that you
9 did -- that you did do at Rosso Uptown?

10 A. Yes. I was a dishwasher.

11 Q. What was your weekly salary when you
12 worked at Rosso Uptown?

13 A. \$400.00 working six days.

14 Q. That was the next question.

15 How did you come up with that number?

16 A. I got to the job. I got there.

17 Q. How did you get paid?

18 A. I was being paid for six days
19 \$400.00.

20 Q. How?

21 A. Cash.

22 Q. You were never on the payroll?

23 MR. MOSER: Objection as to form.

24 A. From March 31, 2017, I started to get
25 paid 350 by check and 125 by cash until from

1 S. HERNANDEZ

2 May 31, 2017, through July 1, 2018, and the
3 job finished at that point. They closed.
4 They said they were going to remodel, and
5 they didn't call me back.

6 MR. GAMMELLA: The actual place
7 was closed, shut down. Closed the
8 doors. That's why there was no call
9 back.

10 Q. Do you remember who worked there at
11 Rosso Uptown?

12 A. Yes. Emanuel, a guy named Miguel
13 worked there. There were others. I don't
14 recall their names. I only remember those
15 two.

16 Q. I suppose at the time you were
17 employed by Rosso Uptown, where did you
18 live? At the same place?

19 A. At the same place.

20 Q. Do you have a valid driver's license
21 or an ID?

22 A. No. I would go by bus. Sometimes by
23 taxi.

24 Q. I'm just asking if he has a valid ID
25 or a driver's license?

1 S. HERNANDEZ

2 A. No.

3 Q. I guess we cannot see that either.

4 My next question was, may I please
5 see it? But we can't see that.

6 At the time you say you were employed
7 by Rosso Uptown, how did you get to work?

8 A. By bus.

9 Q. Were you always on time?

10 A. Yes.

11 Q. What time, more or less, you arrived
12 at Rosso Uptown?

13 A. From Tuesday through Thursday we used
14 to go in at 11:00, and we would get out at
15 10:00. Friday and Saturdays from 11:00 to
16 11:00 p.m.

17 Q. Do you have the key to open the front
18 door? Do you have the keys?

19 A. No.

20 Q. Who was usually there to open the
21 door in the morning?

22 A. When we arrived, it was already
23 opened. I don't know who was the person who
24 opened it.

25 Q. Again, the question was before: What

1 S. HERNANDEZ

2 time did he arrive? What time did he
3 arrive? Just -- I don't want to know the
4 time that it closed or opened. What time
5 did he arrive at the place?

6 A. To the job from Tuesday through
7 Thursday, I arrived at 11:00 a.m., and we
8 got out at 10:00 p.m. Friday and Saturdays
9 we went in at 11:00, and we got out at 11:00
10 p.m.

11 Q. The answer is, he would get there at
12 11:00 a.m. Got you.

13 A. I arrived early, yes. I arrived
14 first. Sometimes when they opened, I was
15 already there.

16 Q. That's the confusion. He said he
17 didn't open the place, the place was already
18 opened. At the same time he is telling me
19 that he got there earlier before the place
20 was open. Which one is it?

21 MR. MOSER: Objection as to form.

22 MR. GAMMELLA: I just asked him.

23 A. No, I would enter at the time to work
24 when the time was up.

25 Q. Do you remember the manager of Rosso

1 S. HERNANDEZ

2 Uptown?

3 A. The manager was Mr. Massimo and
4 Michael.

5 Q. You don't remember anybody else by
6 the name of Renato that he was there always
7 open in the morning?

8 A. No.

9 Q. So you don't remember anyone working
10 there by the name of Renato?

11 A. No. Renato, I don't remember. No.

12 Q. Do you know the hours of operation of
13 Rosso Uptown? But I believe he already told
14 us. If you want to ask him, please?

15 A. Yes. Tuesdays through Thursdays from
16 11:00 a.m. to 10:00 p.m., and Fridays and
17 Saturdays from 11:00 a.m. to 11:00 p.m., and
18 Sunday we went in at 12:00 p.m. through
19 10:00 p.m.

20 Q. Was your schedule always the same?

21 A. The same.

22 Q. And when you worked, approximately,
23 you worked at Rosso Uptown, and when was the
24 last day?

25 A. July 1, 2018, that was the last day.

1 S. HERNANDEZ

2 Q. Were the same people working there
3 when you started until you left?

4 A. Yes.

5 Q. You always worked at Rosso Uptown?

6 A. Yes.

7 Q. Is this the only labor lawsuit you
8 were involved with?

9 A. Yes.

10 Q. Now, you are saying that you worked
11 at Rosso Uptown for various years from
12 whenever he says 2016 to '18, about a couple
13 of years, according to him.

14 The lawsuit says that, you know, we
15 owe him lost wages, and the question is:
16 Why wouldn't you say in, you know, the first
17 week, or the first day, or the first month,
18 or a few months later that you were not
19 getting paid correctly, or there was a
20 discrepancy in the pay?

21 Why would you wait, you know, two
22 years after the place closed to do this?

23 A. When they hired me, I requested a
24 raise and they didn't listen to me. They
25 said no, that that was what I was going to

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2 be given. I then told Michael, and Michael
3 threatened me. He told me you could leave,
4 he said. So I said to him, "So, are you
5 firing me?" He said, "No, stay", he said.

6 Q. How did you end up retaining
7 Mr. Moser, your attorney, that is
8 representing you in your case?

9 A. This was later on. When I already
10 saw that I was lied to, that they told me
11 that they were going to remodel, and I was
12 waiting. So I then looked for a way.

13 Q. So the answer would be, you went to
14 see Mr. Moser?

15 The question was: How did you retain
16 him? Did you go see him, or did you call
17 him? I don't know whatever happened.

18 A. No, I looked for him. I looked for
19 him at the office.

20 Q. So you know him before the lawsuit?
21 You know him beforehand?

22 A. No, I was asking around.

23 Q. Do you remember when was the first
24 time you went to see him?

25 A. No, I don't recall.

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2 Q. Was anyone else there with you?

3 A. No.

4 Q. There are two other individuals named
5 on the Complaint. Do you know them?

6 A. I know Emanuel. And I know Miguel.

7 Q. That is the next question. Do you
8 know their names?

9 One of the persons here in question
10 decided to drop the case. Do you know who
11 this person is?

12 A. No, no.

13 Q. So you don't know the name of this
14 person that was on the lawsuit that is
15 coming off of the lawsuit? You don't know
16 his name, or his last name, or anything?

17 A. The name I do know, but I don't know
18 who it is. What I do know are the two
19 people, which are Emanuel and Miguel, but I
20 don't know which of the two have decided not
21 to continue with the case.

22 MR. GAMMELLA: We're pretty much
23 done here.

24 MR. MOSER: I just want to put a
25 statement on the record.

1 S. HERNANDEZ

2 Mr. Tizzano was advised and has
3 knowledge of both of these
4 depositions. In fact, I think he
5 scheduled the court reporter to be
6 here. He has not appeared on either
7 day.

8 I don't know if Mr. Gammella can
9 represent whether or not he is
10 questioning on behalf of all the
11 defendants here.

12 (Continued on next page to
13 accommodate the jurat.)
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1 S. HERNANDEZ

2 MR. GAMMELLA: Yeah, I'm
3 questioning for everybody. For me,
4 Michael Tizzano, and Rosso Uptown.
5 The whole deposition.

6 MR. MOSER: Okay. Thank you.

7 MR. GAMMELLA: There is a reason
8 why he is not here today, but I'm not
9 going to say it because it's his
10 business.

11 (Time noted: 10:25 a.m.)

12

13

SANTOS HERNANDEZ

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15 Signed and subscribed to
before me, this day
16 of 2022.

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Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK)

:

COUNTY OF NASSAU)

I, Jane Martone, a Notary
Public within and for the State of New York,
do hereby certify:

THAT SANTOS HERNANDEZ, the
witness, whose deposition is hereinbefore
set forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by such witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage; and that I am in no
way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 11th day of
August, 2022, 2022.

Jane Martone
Jane Martone

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